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**APR 19 2006**

**Application number:** 09/827788

**Art Unit:** 3625

**Applicant:** Khai Hee Kwan

**Examiner:** Robert Rhode.

**Title:** Computer Network Method for conducting payment over a network by debiting and crediting telecommunication accounts.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TO: Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

RE: Election/Restriction for the application 09/827788 as per Action Letter mailed March 16 2006 AND April 3 2006 referencing Applicant's communication dated March 1 2006 and March 25 2006, respectively.

Firstly, the applicant apologize to the examiner for failing to include election of the species as required in Action Letter mailed March 16, 2006 and reiterated in April 3, 2006. The applicant appreciates the opportunity to elect the species in this response. Accordingly to response in FULL, the applicant has included both election of Group and Species below to avoid future confusion.

Election of Group.

The Applicant elects Group II subject to species election as detailed at page 5 to page 10. Status Identifier for said claims have been amended to "Previously Presented" to distinguish from the earlier original RCE application faxed Feb 26 2006. (Note the examiner cited March 1 2006).

It is, however, respectfully submitted that the mere fact that the application contains both computer system/readable storage medium storing instructions and method claims does not mandate restriction. The examiner had asserted that both Groups are in different classes ( Group I in class 705 subclass 40 and Group II in class 235, subclass 380) and hence unrelated ( see page 2 of March 16 2006 letter).

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In particular, the examiner asserted that Group I does not need a computer system and a readable storage medium to store instructions. This is despite the fact that Claim 1 recites a payment processor (structure) which is well known to be a computer. The examiner also placed no reasoning on record that the field of search is different or that it would be unreasonable burdensome for the examiner to do so. It should be noted that these claims are seeking continuing examination whereby underlying subject matters were present in the claims prior to the final rejection. Furthermore, no showing of (1) that the process as claimed can be practiced by another materially different apparatus or by hand, or (2) that the apparatus as claimed can be used to practice another and materially different process. ( See Caterpillar Tractor Co. v. Commissioner of Patents & Trademarks, 650 F. Supp. 218 referencing 37 CFR 1.141(b)(2) (emphasis added)).

Accordingly, reconsideration regarding restriction is respectfully requested. Should a restriction requirement nevertheless issue with respect to claims in Group II, Applicant would appreciate an express statement consistent with MPEP 803.01 that claims in Group II are patentable non-obvious over claims in Group I. See MPEP 803.01 requires that the finality to a decision on restriction/election requirement be reviewed by an examiner with permanent or temporary full signatory authority.

#### Election of Species.

The examiner asserted that there are 4 species within Group II and for the purpose of this rebuttal, we have group each species marked as below for ease of reference.

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Species "A" as Species of claims 33, 34, 35 and 42-42, wherein the step of receiving a password from the payor, further includes the steps.

Species "B" as Species of claims 33,34,36, 40-41 and 43, further includes providing a prepaid card.

Species "C" as Species of claims 33,34,37,38,40-41 and 44-45 further includes after authentication.

Species "D" as Species of claims 33,34 and 39-40, further includes the step for the user to establish sub-account.

The rational for election of species is where the application contains claims directed to more than a reasonable number of species. ( See 37 CFR 1.146) However, 37 CFR 1.146 also made it clear this is when a FIRST action is taken by the examiner. As noted the cited claims are being examined in a continuing examination and hence have progressed through at least 2 previous examinations.

The applicant also submits that the species relied by the examiner may not be correct as well. For example in Species D consisting claim 33,34 and 39-40 only shows establishing sub-account in claim 39. Claim 33 and 40 are generic claims while claim 34 refers to a coupling to a carrier's processor. Overall, the examiner has not reasoned how these species have exhibited mutually exclusive characteristic of such species (See MPEP 806.04). For example, it is clear for Species A & C includes a wireless communication device which is used for both sending of password ( Species A) and receiving receipts or goods after authentication ( Species C). It is fair to suggest that it does not make sense merely to authenticate an account without a purpose. For example, a person who uses a ATM is not merely there to authenticate his password, he is there to withdraw money and the only way known is to firstly provide his password before receiving his money. In short the two events (presenting password and receiving a benefit) must be stringed

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together. If this is accepted then species D which incorporates sub-account could not be mutually exclusive to the A & C since the presented password has to be compared to an existing password which is taught to be created by linking to a sub-account identified for withdrawn of funds. As for prepaid card in Species B this could not be said to be burdensome to conduct a search given prepaid account had already been examined previously.

And if our rebuttal above is accepted then the presence of TWO species which were also previously examined, could not be said to be reasonable amount of species as per 37 CFR 1.146 whereby unreasonably burdensome for the examiner.

For the same reason the applicant respectfully ask the examiner to reconsider the above and for a finality decision, the applicant seek MPEP 803.01 to be complied with. For the purposes of election, the applicant elects Species C comprising Claim 33,34,37,38,40-41 and 44-45.

The overall election of claims are restated as follows from page 5 to page 10.

Yours truly,



Khai H Kwan

Customer Number 023336.

15 April 2006